

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
In the Matter of

GENERAL MOTORS CORPORATION

Respondent.

Proceeding Under Section 16 of the
Toxic Substances Control Act
-----X

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. II TSCA-PCB-83-0212

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. The Complainant is the Director, Environmental Services Division, Region II, United States Environmental Protection Agency (EPA). The Respondent is General Motors Corporation.

This Complaint serves to notice Complainant's preliminary determination that Respondent has violated Section 6(e) of TSCA, the regulations promulgated pursuant to that Section, 40 CFR Part 761, (recodified at 47 Fed. Reg. 19526, May 6, 1982; amended at 47 Fed. Reg. 37342, August 25, 1982) and Section 15 of TSCA, as herein-after recited:

1. Respondent, a "person" within the meaning of 40 CFR 761.3(aa), operates a facility at Massena, New York, where PCB Items (as that term is defined at 40 CFR 761.3(x)) are stored and is subject to the regulation promulgated at 40 CFR Part 761 relating to Polychlorinated Biphenyls ("PCBs").

COUNT I

2. In or about July 1979, Respondent disposed of approximately 213,500 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

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3. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 2 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT II

4. In or about August 1979, Respondent disposed of approximately 220,400 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

5. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 4 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT III

6. In or about September 1979, Respondent disposed of approximately 225,000 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

7. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 5 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT IV

8. In or about October 1979, Respondent disposed of approximately 261,800 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

9. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 8 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT V

10. In or about November 1979, Respondent disposed of approximately 293,900 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

11. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 10 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT VI

12. In or about December 1979, Respondent disposed of approximately 156,000 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

13. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 12 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT VII

14. In or about January 1980, Respondent disposed of approximately 98,700 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

15. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 14 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT VIII

16. In or about February 1980, Respondent disposed of approximately 124,000 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

17. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 16 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT IX

18. In or about March 1980, Respondent disposed of approximately 107,900 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

19. Respondent's disposal of PCB-contaminated sludge as alleged in paragraph 19 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT X

20. In or about April 1980, Respondent disposed of approximately 58,100 kilograms of sludge contaminated with PCBs by burial on its property. These sludges that Respondent disposed of contained varying amounts of PCBs, from 50 parts per million to in excess of 500 parts per million. Respondent's disposal of these sludges on the facility property, as described above, was a method of PCB disposal not authorized by 40 CFR 761.60.

21. Respondent's disposal of PCB-contaminated sludge, as alleged in paragraph 20 above, constitutes a failure or refusal to comply with 40 CFR 761.60, which is a violation of Section 15(1)(C) of TSCA.

COUNT XI

22. On or about May 13, 1982, Respondent stored approximately 14,000 gallons of PCB-contaminated waste oil at its facility in a structure known as the old pump house, a PCB container. There was no PCB Mark affixed to the pump house, as required by 40 CFR 761.40(a)(1).

23. Respondent's storage of PCBs, as alleged in paragraph 22, above, constitutes a failure or refusal to comply with 40 CFR 761.40(a)(1), which is a violation of Section 15(1)(C) of TSCA.

COUNT XII

24. On or about October 15, 1981, Respondent stored PCB-contaminated sludge in each of two open-topped hoppers in its PCB storage area at its facility. Each hopper contained an estimated 200 kilograms of PCB-contaminated sludge. Each hopper did not bear the PCB Mark that is required by 40 CFR 761.40(a)(1). Respondent also stored for disposal an estimated three thousand 55-gallon drums containing PCB waste oils and PCB sludge in its PCB storage area, a diked area located in the main building at its facility. This PCB storage area did not bear the PCB Mark as required by 40 CFR 761.40(a)(10).

25. Respondent's storage of PCB-contaminated sludge in two large containers that did not bear the PCB Mark and Respondent's storage of three thousand 55-gallon drums containing PCB waste oil and PCB sludge in an area that did not bear the PCB Mark, as alleged in paragraph 24, above, constitute a failure or refusal to comply with 40 CFR 761.40(a)(1), which is a violation of Section 15(1)(C) of TSCA.

COUNT XIII

26. In or about July 1979, Respondent added approximately 15,000 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

27. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 26, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XIV

28. In or about August 1979, Respondent added approximately 7,500 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

29. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 28, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XV

30. In or about September 1979, Respondent added approximately 11,300 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

31. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 30, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XVI

32. In or about October 1979, Respondent added approximately 18,900 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

33. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 32, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XVII

34. In or about November 1979, Respondent added approximately 3,700 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

35. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 34, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XVIII

36. In or about December 1979, Respondent added approximately 7,500 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

37. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 36, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XIX

38. In or about January 1980, Respondent added approximately 7,500 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

39. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 38, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XX

40. In or about February 1980, Respondent added approximately 11,300 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

41. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 40, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XXI

42. In or about March 1980, Respondent added approximately 15,100 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

43. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 42, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XXII

44. In or about April 1980, Respondent added approximately 21,700 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

45. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 44 above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XXIII

46. In or about May 1980, Respondent added approximately 15,100 kilograms of hydraulic fluid containing PCBs to hydraulic systems at its facility. Addition of PCBs to hydraulic systems is prohibited by 40 CFR 761.30(e)(3).

47. Respondent's addition of PCBs to hydraulic systems, as alleged in paragraph 46, above, constitutes a failure or refusal to comply with 40 CFR 761.30(e)(3), which is a violation of Section 15(1)(C) of TSCA.

COUNT XXIV

48. On or about October 15, 1981, Respondent stored PCB-contaminated oil and PCB-contaminated sludge for disposal at its facility as follows:

A. Approximately two hundred 55-gallon drums containing PCB-contaminated oil and sludge were stored in an undiked area adjacent to the diked storage area described in paragraph 24, above. The drums did not bear the date they were placed in storage for disposal, did not bear a notation that liquids inside the drums did not exceed 500 ppm of PCBs, nor was a Spill Prevention Control and Countermeasure Plan prepared and implemented for the area containing the 200 drums, all as required by 40 CFR 761.65(c)(1).

B. The storage area containing the 3,000 drums, described in paragraph 24, above, contained drums that were leaking liquid PCBs, and drums that had PCB-contaminated sludge on their exterior surface. Areas of the floor in the storage area were covered with material used to absorb PCBs that were leaking from the drums. Any leaking PCB containers and their contents must be transferred immediately to properly marked non-leaking containers; any spilled or leaked PCBs must be immediately cleaned up and properly stored, as required by 40 CFR 761.65(c)(5).

49. Respondent's storage of PCBs for disposal, as alleged in paragraph 48, above, constitutes a failure or refusal to comply with 40 CFR 761.65(c), which is a violation of Section 15(1)(C) of TSCA.

COUNT XXV

50. On or about May 13, 1982, Respondent stored PCBs for disposal in a structure known as the old pump house, described in paragraph 22 above. This structure is a PCB container that does not comply with the storage for disposal requirements set forth in 40 CFR 761.65(c)(6) and (7).

51. Respondent's storage of PCBs for disposal in the old pump house, as alleged in paragraph 50, above, constitutes a failure or refusal to comply with 40 CFR 761.65(c)(6) and (7) which is a violation of Section 15(1)(C) of TSCA.

COUNT XXVI

52. On or about May 13, 1982, Respondent failed to include in the facility annual document for 1979 and for 1980 the PCBs taken out of service and disposed of on-site and the PCB oil stored for disposal in the old pump house. Respondent's annual documents for 1979 and for 1980 did not comply with the requirements set forth in 40 CFR 761.180(a).

53. Respondent's failure to maintain an accurate annual document for 1979 and for 1980, as alleged in paragraph 52, above, constitutes a failure or refusal to comply with 40 CFR 761.180(a), which is a violation of Section 15(1)(C) of TSCA.

PROPOSED CIVIL PENALTY

Section 16 of TSCA authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA, and the regulations promulgated thereunder. Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, the effect of the proposed penalty upon Respondent's ability to continue to do business, Respondent's history of prior violations and degree of culpability, the following penalties are hereby proposed to be assessed for the violations alleged in this Complaint.

COUNT I:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT II:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT III:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT IV:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT V:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT VI:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT VII:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT VIII:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$25,000

COUNT IX:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT X:

Circumstance Level - 1
Extent Category - Major
Proposed Assessment for this Count: \$ 25,000

COUNT XI:

Circumstance Level - 3
Extent Category - Major
Proposed Assessment for this Count: \$ 15,000

COUNT XII:

Circumstance Level - 3
Extent Category - Significant
Proposed Assessment for this Count: \$ 10,000

COUNT XIII:

Circumstance Level - 2
Extent Category - Major
Proposed Assessment for this Count: \$ 20,000

COUNT XIV:

Circumstance Level - 2
Extent Category - Significant
Proposed Assessment for this Count: \$ 13,000

COUNT XV:

Circumstance Level - 2
Extent Category - Major
Proposed Assessment for this Count: \$ 20,000

COUNT XVI:

Circumstance Level - 2
Extent Category - Major
Proposed Assessment for this Count: \$ 20,000

COUNT XVII:

Circumstance Level - 2
 Extent Category - Significant
 Proposed Assessment for this Count: \$ 13,000

COUNT XVIII:

Circumstance Level - 2
 Extent Category - Significant
 Proposed Assessment for this Count: \$ 13,000

COUNT XIX:

Circumstance Level - 2
 Extent Category - Significant
 Proposed Assessment for this Count: \$ 13,000

COUNT XX:

Circumstance Level - 2
 Extent Category - Major
 Proposed Assessment for this Count: \$ 20,000

COUNT XXI:

Circumstance Level - 2
 Extent Category - Major
 Proposed Assessment for this Count: \$ 20,000

COUNT XXII:

Circumstance Level - 2
 Extent Category - Major
 Proposed Assessment for this Count: \$ 20,000

COUNT XXIII:

Circumstance Level - 2
 Extent Category - Major
 Proposed Assessment for this Count: \$ 20,000

COUNT XXIV:

Circumstance Level - 3
 Extent Category - Major
 Proposed Assessment for this Count: \$ 15,000

COUNT XXV:

Circumstance Level - 3
 Extent Category - Major
 Proposed Assessment for this Count: \$ 15,000

COUNT XXVI:

Circumstance Level - 4
 Extent Category - Major
 Proposed Assessment for this Count: \$ 10,000

TOTAL \$507,000

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, and in accordance with Section 554 of Title 5, United States Code, you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty. To avoid being found in default and having the above-cited penalty assessed without further proceedings, you must file a written answer to this Complaint, including a request for a formal hearing, with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 within fifteen (15) days of your receipt of this Complaint. Your answer should clearly and directly admit deny, or explain each of the factual allegations contained in this Complaint with regard to which you have any knowledge. Your answer should contain (1) a definite statement of the facts which constitute the grounds of defense, and (2) a concise statement of the facts which you intend to place in issue at the hearing.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. Your failure to file a written answer within fifteen (15) days of receipt of this Complaint will constitute an admission of all facts alleged in the Complaint and a waiver of your right to a formal hearing to contest any facts alleged in the Complaint. In such event, a Final Order on Default will be issued by the Regional Administrator and the civil penalty proposed herein will be imposed without further proceedings. Such Final Order on Default is not subject to review in any court.

Any hearing that you request will be held in the county, parish or incorporated city of your residence. Hearings held on the appropriateness of civil penalties under TSCA will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. §552 et seq.) and the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties or the Revocation or Suspension of Permits," 40 CFR 22.01 et seq., a copy of which accompanies this Complaint.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, the EPA encourages settlement of this proceeding consistent with the provisions of TSCA. At an informal conference you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including (1) actions you have taken to correct the violation, (2) the effect the proposed penalty would have on your ability to continue in business or (3) any other special circumstances you care to raise. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such conference, or to recommend that the Regional Administrator dismiss any or all of the charges, if the circumstances so warrant. Any

requests for an informal conference or any other questions that you may have regarding this Complaint should be directed to Gregory T. Halbert, Attorney, Waste and Toxic Substances Branch, Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-5695.

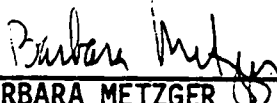
Please note that a request for an informal settlement conference does not extend the fifteen (15) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to or simultaneously with the adjudicatory hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order to be issued by the Regional Administrator of EPA, Region II and signed by you or your representative. Your signing of such Consent Agreement shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a hearing within the fifteen-day period cited above, the assessed penalty will be imposed without further proceedings.

PAYMENT OF PENALTY

Instead of filing an answer requesting a hearing or requesting an informal settlement conference, you may choose to pay the proposed penalty. Such payment should be made by sending to the Regional Hearing Clerk, EPA, Region II, a cashier's or certified check in the amount of the penalty assessed in this Complaint. Your check must be made payable to the United States of America.

Dated: September 28, 1983


 BARBARA METZGER
 Director
 Environmental Services Division
 U. S. Environmental Protection Agency
 Region II
 Woodbridge Avenue
 Edison, New Jersey 08837

TO: Mr. Roger B. Smith
 Chairman of the Board
 General Motors Corporation
 3044 W. Grand Boulevard
 Detroit, Michigan 48202

bcc: Walter Mugdan, 2 ORC-WTS
 Kenneth Eng, 2 PM-PA
 James Marshall, 2 OEP
 Mary McDonnell, EN-342
 Daniel Kraft, 2 ES-PTS

cc: Laurens Vernon, Esq.
 Compliance Counsel
 New York State Department of
 Environmental Conservation

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of October, 1983 I served a true and correct copy of the foregoing Complaint and copy of the Consolidated Rules of Practice by certified mail to Mr. Roger B. Smith, Chairman of the Board, General Motors Corporation, 3044 W. Grand Boulevard, Detroit, Michigan 48202. I handcarried the original and two copies of the foregoing Complaint to the Regional Hearing Clerk.

Betty R. Ballinger